

By Lucio Catiff

S.B. No. 26

A BILL TO BE ENTITLED

AN ACT

relating to civil remedies for deceptive trade practices.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 17.42, 17.43, and 17.44, Business & Commerce Code, are amended to read as follows:

Sec. 17.42. WAIVERS; PUBLIC POLICY. (a) Any waiver by a consumer of the provisions of this subchapter is contrary to public policy and is unenforceable and void; provided, however, that a waiver is valid and enforceable if the waiver is in writing and [a defendant-in-an-action-or-claim-under-this--subchapter--pleads--and proves:

[1]--the--consumer-is-not-in-a-significantly-disparate bargaining-position;

[2] the consumer is represented by legal counsel [in seeking-or-acquiring-goods-or-services, other-than-the-purchase--or lease--of--a--family--residence--occupied--or-to-be-occupied-as-the consumer's-residence, by-a-purchase-or-a-lease-for-a--consideration paid-or-to-be-paid-that-exceeds-\$500,000, and

[3]--the---consumer---waives---all--or--part--of--this subchapter, other than Section 17.555, by an express provision in a written contract signed by both the--consumer--and--the--consumer's legal-counsel, and provided, however, that a business-consumer with assets-of-\$5-million-or-more-according-to-the-most-recent-financial statement--of--the--business--consumer--prepared-in-accordance-with

1 generally-accepted-accounting-principles--that--has--knowledge--and
2 experience--in--financial--and--business--matters-that-enable-it-to
3 evaluate-the-merits-and-risks-of-a-transaction-and-that-is-not-in-a
4 significantly-disparate-bargaining-position-may-by-written-contract
5 waive--the--provisions--of--this--subchapter,--other--than--Section
6 17.555].

7 (b) A waiver under Subsection (a) is not effective if the
8 consumer's legal counsel was directly or indirectly identified,
9 suggested, or selected by a defendant or an agent of the defendant
10 [The--existence--or--absence-of-a-disparate-bargaining-position-may
11 not-be-established-as-a-matter-of-law-solely--by--evidence--of--the
12 consumer's--financial--position--relative--to--other-parties-to-the
13 contract-or-by-matters-contained-in-a-written-contract-relating--to
14 the-relative-bargaining-position-of-the-parties].

15 (c) A waiver under this section must be in bold-face type of
16 at least 10 points in size and must be in substantially the
17 following form:

18 "The undersigned waive their rights under the Deceptive
19 Trade Practices-Consumer Protection Act, Section 17.41,
20 et seq., Business & Commerce Code, a law that confers
21 special rights on consumers. After consultation with
22 an attorney of their own selection, the undersigned
23 voluntarily consent to this waiver."

24 (d) The waiver required by Subsection (c) may be modified to
25 wave only specified rights under this subchapter.

26 Sec. 17.43. CUMULATIVE REMEDIES. The provisions of this
27 subchapter are not exclusive. The remedies provided in this

1 subchapter are in addition to any other procedures or remedies
2 provided for in any other law; provided, however, that no recovery
3 shall be permitted under both this subchapter and another law of
4 both [~~actual~~] damages and penalties for the same act or practice.
5 A violation of a provision of law other than this subchapter is not
6 in and of itself a violation of this subchapter. An act or
7 practice that is a violation of a provision of law other than this
8 subchapter may be made the basis of an action under this subchapter
9 if the act or practice is proscribed by a provision of this
10 subchapter or is declared by such other law to be actionable under
11 this subchapter. The provisions of this subchapter do not in any
12 way preclude other political subdivisions of this state from
13 dealing with deceptive trade practices.

14 Sec. 17.44. CONSTRUCTION AND APPLICATION. (a) This
15 subchapter shall be liberally construed and applied to promote its
16 underlying purposes, which are to provide special remedies to
17 individual and small business [~~protect~~] consumers in transactions
18 not larger than \$500,000 against false, misleading, and deceptive
19 business practices, unconscionable actions, and breaches of
20 warranty and to provide efficient and economical procedures to
21 secure such protection.

22 (b) This section may not be construed to derogate a
23 reasonable business or commercial practice or to penalize a person
24 who substantially complies with the requirements of this
25 subchapter.

26 SECTION 2. Section 17.45, Business & Commerce Code, is
27 amended by amending Subdivisions (4), (5), (9), and (10) and adding

1 Subdivisions (11), (12), and (13) to read as follows:

2 (4) "Consumer" means an individual~~[---partnership~~
3 ~~corporation---this-state---or-a-subdivision-or-agency-of-this-state]~~
4 who seeks or acquires by purchase or lease, any goods or services,
5 except that the term does not include a business consumer that has
6 assets of \$25 million or more~~[---or-that-is-owned-or-controlled-by-a~~
7 ~~corporation-or-entity-with-assets-of-\$25-million-or-more]~~.

8 (5) "Unconscionable action or course of action" means
9 an act or practice which, to a consumer's ~~[person's]~~ detriment, ~~[+~~

10 ~~[+A)]~~ takes advantage of the lack of knowledge,
11 ability, experience, or capacity of the consumer ~~[a--person]~~ to a
12 grossly unfair degree~~[---or~~

13 ~~[+B)]--results--in--a--gross-disparity-between-the~~
14 ~~value-received-and-consideration-paid---in-a--transaction--involving~~
15 ~~transfer-of-consideration]~~.

16 (9) "Knowingly" means actual awareness of the falsity,
17 deception, or unfairness of the act or practice giving rise to the
18 consumer's claim or, in an action brought under Subdivision (2) of
19 Subsection (a) of Section 17.50, actual awareness of the act, ~~[or]~~
20 practice, condition, defect, or failure constituting the breach of
21 warranty, but actual awareness may be inferred where objective
22 manifestations indicate that a person acted with actual awareness.

23 (10) "Business consumer" means an individual~~[~~
24 ~~partnership---or---corporation]~~ who seeks or acquires by purchase or
25 lease, any goods or services for commercial or business use. ~~[The~~
26 ~~term-does-not-include-this-state-or-a-subdivision-or-agency-of-this~~
27 ~~state--]~~

1 (11) "Intentionally" means actual awareness of the
2 falsity, deception, or unfairness of the act or practice giving
3 rise to the consumer's claim, coupled with the specific intent that
4 the consumer act in detrimental reliance on the falsity or
5 deception or in detrimental ignorance of the unfairness. Intention
6 may be inferred from objective manifestations that indicate that
7 the person acted intentionally or from facts showing that a
8 defendant acted with flagrant disregard of prudent and fair
9 business practices to the extent that the defendant should be
10 treated as having acted intentionally.

11 (12) "Professional service" means a service provided
12 by or under the direct supervision of a registered, certified, or
13 licensed person in the scope of the registration, certification, or
14 license as:

- 15 (A) an accountant;
16 (B) an architect;
17 (C) a lawyer;
18 (D) a pharmacist;
19 (E) a professional engineer; or
20 (F) a real estate broker.

21 (13) "Economic damages" means damages for pecuniary
22 loss resulting from loss of or damage to tangible property,
23 including costs of repair and replacement.

24 SECTION 3. Section 17.46(d), Business & Commerce Code, is
25 amended to read as follows:

26 (d) For the purposes of the relief authorized in Subdivision
27 (1) of Subsection (a) of Section 17.50 of this subchapter, the term

1 "false, misleading, or deceptive acts or practices" is limited to
2 the acts that are enumerated in specific subdivisions of Subsection
3 (b) of this section and that the trier of fact finds were committed
4 knowingly. This subsection does not apply to the authority of the
5 consumer protection division or any other person seeking injunctive
6 or other equitable relief.

7 SECTION 4. Section 17.49, Business & Commerce Code, is
8 amended by adding Subsections (c), (d), and (e) to read as follows:

9 (c) This subchapter does not apply to a cause of action
10 against an individual arising out of the provision of professional
11 services by the individual.

12 (d) This subchapter does not apply to a cause of action for
13 bodily injury or death or to any other cause of action in tort for
14 damages other than damage to tangible property.

15 (e) This subchapter does not apply to a cause of action
16 arising out of a transaction the total dollar value of which
17 exceeds \$500,000.

18 SECTION 5. Sections 17.50(a) and (b), Business & Commerce
19 Code, are amended to read as follows:

20 (a) A consumer may maintain an action where any of the
21 following constitute a producing cause of economic [actual]
22 damages:

23 (1) the use or employment by any person of a false,
24 misleading, or deceptive act or practice that is specifically
25 enumerated in a subdivision of Subsection (b) of Section 17.46 of
26 this subchapter;

27 (2) breach of an express or implied warranty;

1 (3) any unconscionable action or course of action by
2 any person; or

3 (4) the use or employment by any person of an act or
4 practice in violation of Article 21.21, Texas Insurance Code, as
5 amended, or rules or regulations issued by the State Board of
6 Insurance under Article 21.21, Texas Insurance Code, as amended.

7 (b) In a suit filed under this section, each consumer who
8 prevails may obtain:

9 (1) the amount of economic [actual] damages found by
10 the trier of fact. In addition the court shall award exemplary
11 damages in an amount equal to two times that portion of the
12 economic [actual] damages that does not exceed \$1,000. If the
13 trier of fact finds that the conduct of the defendant was committed
14 intentionally or knowingly in the case of a breach of an express or
15 implied warranty, the trier of fact may also award exemplary
16 damages in an amount equal to not more than three times the amount
17 of economic [actual] damages in excess of \$1,000, subject to
18 Section 17.501 [provided-that-]

19 [~~(A)--the-provisions-of-Chapters-33-and-417-Civil~~
20 ~~Practice-and-Remedies-Code, shall govern the determination of the~~
21 ~~consumer's right under this subchapter to recover actual and other~~
22 ~~damages, including exemplary damages, and the amount of those~~
23 ~~damages that may be recovered by the consumer under this~~
24 ~~subchapter, in an action seeking damages for (i) death; (ii)~~
25 ~~personal injury other than mental anguish or distress associated~~
26 ~~with a violation of this subchapter that does not involve death or~~
27 ~~bodily injury; or (iii) damage to property other than the goods~~

1 acquired--by--the--purchase--or--lease--that--is--involved--in--the
2 consumer's-action--or--claim--if--that--damage--arises--out--of--an
3 occurrence-that-involves-death-or-bodily-injury;-and

4 [(B)--only--in--an--action--under-this-subchapter
5 that--is--subject--to--Paragraph--(A)--of--this--subdivision,---the
6 consumer's-right-to-recover-damages-shall-be-subject-to-any-defense
7 or--defensive--matter-that-could-be-considered-by-the-trier-of-fact
8 in-an-action-subject-to-Chapter-33,--Civil--Practice--and--Remedies
9 Code,--in-determining-the-percentage-of-responsibility-attributable
10 to-the-consumer-claimant-under-that-chapter];

11 (2) an order enjoining such acts or failure to act;

12 (3) orders necessary to restore to any party to the
13 suit any money or property, real or personal, which may have been
14 acquired in violation of this subchapter; and

15 (4) any other relief which the court deems proper,
16 including the appointment of a receiver or the revocation of a
17 license or certificate authorizing a person to engage in business
18 in this state if the judgment has not been satisfied within three
19 months of the date of the final judgment. The court may not revoke
20 or suspend a license to do business in this state or appoint a
21 receiver to take over the affairs of a person who has failed to
22 satisfy a judgment if the person is a licensee of or regulated by a
23 state agency which has statutory authority to revoke or suspend a
24 license or to appoint a receiver or trustee. Costs and fees of
25 such receivership or other relief shall be assessed against the
26 defendant.

27 SECTION 6. Subchapter E, Chapter 17, Business & Commerce

1 Code, is amended by adding Section 17.501 to read as follows:

2 Sec. 17.501. COMPARATIVE RESPONSIBILITY IN CERTAIN ACTIONS.

3 (a) Damages awarded under Section 17.50(b)(1) shall be reduced by
4 the percentage of fault attributed to the consumer. If the
5 consumer's percentage of fault exceeds 50 percent, the consumer may
6 not recover under Section 17.50(b)(1).

7 (b) The liability of a defendant is not joint and several,
8 but each defendant is liable only for the percentage of the total
9 economic damages and nondiscretionary exemplary damages, before any
10 reduction under Subsection (a), that is equal to the percentage of
11 responsibility of that defendant.

12 (c) A defendant is not liable for the percentage of economic
13 damages and nondiscretionary exemplary damages equal to the
14 percentage of responsibility of another defendant who settled with
15 the consumer or of any person not joined in the cause of action.

16 (d) An award of discretionary exemplary damages under
17 Section 17.50(b)(1) is specific as to each defendant, and only the
18 defendant against whom the award is made is liable for the damages.

19 (e) In apportioning fault to a consumer under Subsection
20 (a), the trier of fact shall include wrongful or negligent conduct
21 of the consumer, including negligence, misuse, or failure to
22 observe product specifications, warnings, or disclosures, and
23 similar acts.

24 (f) Notwithstanding Subsection (e), a consumer may rely
25 entirely on a representation of a defendant, and the failure of the
26 consumer to investigate the representation is not evidence of
27 wrongful or negligent conduct in relation to that defendant.

1 (g) Chapters 33 and 41, Civil Practice and Remedies Code, do
2 not apply to an action under this subchapter.

3 SECTION 7. Section 17.505, Business & Commerce Code, is
4 amended to read as follows:

5 Sec. 17.505. NOTICE: OFFER OF SETTLEMENT. (a) As a
6 prerequisite to filing a suit seeking damages under Subdivision (1)
7 of Subsection (b) of Section 17.50 of this subchapter against any
8 person, a consumer shall give written notice to the person at least
9 60 days before filing the suit advising the person in reasonable
10 detail of the consumer's specific complaint and the amount of
11 economic [~~actual~~] damages and expenses, including attorneys' fees,
12 if any, reasonably incurred by the consumer in asserting the claim
13 against the defendant. During the 60-day period a written request
14 to inspect, in a reasonable manner and at a reasonable time and
15 place, the goods that are the subject of the consumer's action or
16 claim may be presented to the consumer. If the consumer
17 unreasonably refuses to permit the inspection, the court shall not
18 award the two times economic [~~actual~~] damages not exceeding \$1,000,
19 as provided in Subsection (b) of Section 17.50 of this subchapter.

20 (b) If the giving of 60 days' written notice is rendered
21 impracticable by reason of the necessity of filing suit in order to
22 prevent the expiration of the statute of limitations or if the
23 consumer's claim is asserted by way of counterclaim, the notice
24 provided for in Subsection (a) of this section is not required, but
25 the tender provided for by Subsection (d) [~~(c)~~] of this section and
26 by Subsection (d), Section 17.506 of this subchapter may be made
27 within 60 days after the filing of the suit or counterclaim.

1 (c) If a consumer does not give the written notice required
2 by Subsection (a) and Subsection (b) does not apply, the consumer
3 may cure the failure by giving the written notice as required by
4 Subsection (a) to the person against whom the suit is pending. A
5 person receiving notice under this subsection may abate the suit
6 only if the person files a plea in abatement and an affidavit
7 stating the facts required to be established by this subsection in
8 a court in which the suit is pending. The plea in abatement and
9 affidavit must be filed not later than the 30th day after the date
10 the person receives the written notice. If the consumer does not
11 file a controverting affidavit or if, after hearing, the court
12 finds the person is entitled to the abatement, the court shall
13 abate the suit for 60 days.

14 (d) Any person who receives the written notice provided by
15 Subsection (a) or (c) of this section may, within 60 days after the
16 receipt of the notice, tender to the consumer a written offer of
17 settlement, including an agreement to reimburse the consumer for
18 the attorneys' fees, if any, reasonably incurred by the consumer in
19 asserting his claim up to the date of the written notice. A person
20 who does not receive such a written notice due to the consumer's
21 suit or counterclaim being filed as provided for by Subsection (b)
22 of this section may, within 60 days after the filing of such suit
23 or counterclaim, tender to the consumer a written offer of
24 settlement, including an agreement to reimburse the consumer for
25 the attorneys' fees, if any, reasonably incurred by the consumer in
26 asserting his claim up to the date the suit or counterclaim was
27 filed. Any offer of settlement not accepted within 30 days of

1 receipt by the consumer shall be deemed to have been rejected by
2 the consumer.

3 (e) [~~f~~d] A settlement offer made in compliance with
4 Subsection (d) [~~e~~] of this section, if rejected by the consumer,
5 may be filed with the court together with an affidavit certifying
6 its rejection. If the amount tendered in the settlement offer is
7 the same as or more than, or if the court finds that amount to be
8 substantially the same as, the economic [~~actual~~] damages found by
9 the trier of fact, the consumer may not recover an amount in excess
10 of the amount tendered in the settlement offer or the amount of
11 economic [~~actual~~] damages found by the trier of fact, whichever is
12 less. Such settlement offer shall not be admissible as evidence
13 before a jury.

14 (f) [~~e~~] The tender of an offer of settlement is not an
15 admission of engaging in an unlawful act or practice or of
16 liability under this Act. Evidence of a settlement offer may be
17 introduced only to determine the reasonableness of the settlement
18 offer as provided for by Subsection (e) [~~f~~d] of this section.

19 SECTION 8. Section 17.506(d), Business & Commerce Code, is
20 amended to read as follows:

21 (d) In an action brought under Section 17.50 of this
22 subchapter, it is a defense to a cause of action if the defendant
23 proves that he received notice from the consumer advising the
24 defendant of the nature of the consumer's specific complaint and of
25 the amount of economic [~~actual~~] damages and expenses, including
26 attorneys' fees, if any, reasonably incurred by the consumer in
27 asserting the claim against the defendant, and that within 30 days

1 after the day on which the defendant received the notice the
2 defendant tendered to the consumer:

3 (1) the amount of economic [~~actual~~] damages claimed;
4 and

5 (2) the expenses, including attorneys' fees, if any,
6 reasonably incurred by the consumer in asserting the claim against
7 the defendant.

8 SECTION 9. Section 17.56, Business & Commerce Code, is
9 amended to read as follows:

10 Sec. 17.56. VENUE. An action brought which alleges a claim
11 to relief under Section 17.50 of this subchapter may be commenced
12 in the county in which the person against whom the suit is brought
13 resides or[7] has his principal place of business, [~~or-has-a-fixed~~
14 ~~and-established-place-of-business-at-the-time-the-suit-is--brought~~]
15 or in the county in which the alleged act or practice occurred or
16 in a county in which the defendant or an authorized agent of the
17 defendant solicited the transaction made the subject of the action
18 at bar.

19 SECTION 10. Section 33.002(b), Civil Practice and Remedies
20 Code, is amended to read as follows:

21 (b) This chapter does not apply to:

22 (1) an action to collect workers' compensation
23 benefits under the workers' compensation laws of this state,
24 Subtitle A, Title 5, Labor Code, [~~{Article-8306-et-seq-7-Vernon's~~
25 ~~Texas-Civil-Statutes}~~] or actions against an employer for exemplary
26 damages arising out of the death of an employee;

27 (2) an action brought under the Deceptive Trade

1 Practices-Consumer Protection Act (Subchapter E, Chapter 17,
2 Business & Commerce Code) [~~except--as--specifically--provided--in~~
3 ~~Section-17-50-of-that-Act~~]; or

4 (3) an action brought under Chapter 21, Insurance
5 Code.

6 SECTION 11. This Act takes effect September 1, 1995, and
7 applies only to a cause of action that accrues on or after that
8 date. An action that accrued before the effective date of this Act
9 is governed by the law applicable to the action immediately before
10 the effective date of this Act, and that law is continued in effect
11 for that purpose.

12 SECTION 12. The importance of this legislation and the
13 crowded condition of the calendars in both houses create an
14 emergency and an imperative public necessity that the
15 constitutional rule requiring bills to be read on three several
16 days in each house be suspended, and this rule is hereby suspended.

BILL ANALYSIS

Senate Research Center

S.B. 26
By: Bivins
Economic Development
01-17-95
As Filed

BACKGROUND

The Deceptive Trade Practice and Consumer Protection Act (DTPA) was adopted to dissuade big businesses from taking advantage of consumers by offering the consumer triple-damages. Currently, the DTPA has become an avenue for numerous lawsuits, making the application of the DTPA inconsistent with the original intent.

PURPOSE

As proposed, S.B. 26 reforms the procedure and conditions for awarding damages for deceptive trade practices.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 17.42, 17.43, 17.44, Business & Commerce Code, as follows:

Sec. 17.42. WAIVERS; PUBLIC POLICY. (a) Provides that a waiver by a consumer of the provision of this subchapter is only enforceable if the waiver is in writing and the consumer is represented by legal counsel.

Deletes existing Subdivisions (1)-(3).

(b) Provides that a waiver is not effective if the consumer's legal counsel was directly or indirectly identified, suggested, or selected by a defendant or an agent of the defendant. Deletes existing text.

(c) Sets forth the format and language of the waiver.

(d) Authorizes the waiver to be modified to waive only specific rights under this subchapter.

Sec. 17.43. CUMULATIVE REMEDIES. Deletes the provision that no recovery shall be permitted under this subchapter and another law of actual damages for the same act or practice.

Sec. 17.44. CONSTRUCTION AND APPLICATION. (a) Provides that a purpose of this subchapter is to provide special remedies to individual and small business consumers in transactions not larger than \$500,000 against certain practices.

(b) Prohibits this section from being construed to derogate a reasonable business or commercial practice or to penalize a person who substantially complies with the requirements of this subchapter.

SECTION 2. Amends Section 17.45, Business & Commerce Code, by amending Subdivisions (4), (5), (9), and (10), and by adding Subdivisions (11)-(13), to define "consumer," "unconscionable action or course of action," "knowingly," "business consumer," "intentionally," "professional service," and "economic damages."

SECTION 3. Amends Section 17.46(d), Business & Commerce Code, to redefine "false, misleading, or deceptive acts or practices."

SECTION 4. Amends Section 17.49, Business & Commerce Code, by adding Subsections (c)-(e), as follows:

(c) Provides that this subchapter does not apply to a cause of action against an individual arising out of the provision of professional services by the individual.

(d) Provides that this subchapter does not apply to a cause of action for bodily injury or death or to any other cause of action in tort for damages other than damage to tangible property.

(e) Provides that this subchapter does not apply to a cause of action arising out of a transaction the total dollar value of which exceeds \$500,000.

SECTION 5. Amends Sections 17.50(a) and (b), Business & Commerce Code, as follows:

(a) Makes a conforming change.

(b) Authorizes a consumer who prevails to obtain certain facts in a suit filed under this section. Deletes existing Subdivisions (A) and (B).

SECTION 6. Amends Chapter 17E, Business & Commerce Code, by adding Section 17.501, as follows:

Sec. 17.501. COMPARATIVE RESPONSIBILITY IN CERTAIN ACTIONS. (a) Requires damages awarded under Section 17.50(b)(1) to be reduced by the percentage of fault attributed to the consumer, unless the consumer's percentage is greater than 50 percent in which case no damages may be recovered.

(b) Provides that a defendant is only liable for the percentage of the total economic damages and nondiscretionary exemplary damages, before any reduction under Subsection (a), that is equal to the percentage of responsibility of that defendant.

(c) Provides that a defendant is not liable for the percentage of economic damages and nondiscretionary exemplary damages equal to the percentage of responsibility of another defendant who settled with the consumer or of any person not joined in the cause of action.

(d) Provides that an award of damages is specific as to each defendant, and only the defendant against whom the award is made is liable for the damages.

(e) Sets forth the required procedure for apportioning fault to a consumer under Subsection (a).

(f) Authorizes a consumer to rely entirely on a representation of a defendant, and the failure of the consumer to investigate the representation is not evidence of wrongful or negligent conduct.

(g) Prohibits the application of Chapters 33 and 41, Civil Practice and Remedies Code, under this subchapter.

SECTION 7. Amends Section 17.505, Business & Commerce Code, as follows:

Sec. 17.505. NOTICE: OFFER OF SETTLEMENT. (a)-(b) Makes conforming changes.

(c) Authorizes a consumer to provide written notice as required by Subsection (a) against whom the suit is pending. Authorizes a person receiving notice under this subsection to abate the suit if the person follows the required procedures. Requires the

BILL ANALYSIS

Senate Research Center

S.B. 26
By: Bivins
Economic Development
02-15-95
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BACKGROUND

The Deceptive Trade Practice and Consumer Protection Act (DTPA) was adopted to dissuade big businesses from taking advantage of consumers by offering the consumer triple-damages. Currently, the DTPA has become an avenue for numerous lawsuits, making the application of the DTPA inconsistent with the original intent.

PURPOSE

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RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 17.42, 17.43, 17.44, Business & Commerce Code, as follows:

Sec. 17.42. **WAIVERS; PUBLIC POLICY.** (a) Provides that a waiver by a consumer of the provision of this subchapter is only enforceable if the waiver is in writing and the consumer is represented by legal counsel.

Deletes existing Subdivisions (1)-(3).

(b) Provides that a waiver is not effective if the consumer's legal counsel was directly or indirectly identified, suggested, or selected by a defendant or an agent of the defendant. Deletes existing text.

(c) Sets forth the format and language of the waiver.

(d) Authorizes the waiver to be modified to waive only specific rights under this subchapter.

Sec. 17.43. **CUMULATIVE REMEDIES.** Provides that no recovery shall be permitted under both this subchapter and another law of both damages and penalties for the same act or practice.

Sec. 17.44. **CONSTRUCTION AND APPLICATION.** (a) Provides that a purpose of this subchapter is to provide special remedies to individual and small business consumers in transactions not larger than \$500,000 against certain practices.

(b) Prohibits this section from being construed to derogate a reasonable business or commercial practice or to penalize a person who substantially complies with the requirements of this subchapter.

SECTION 2. Amends Section 17.45, Business & Commerce Code, by amending Subdivisions (4), (5), (9), and (10), and by adding Subdivisions (11)-(13). Modifies the definitions of "consumer," "unconscionable action or course of action," "knowingly," "business consumer," and adds "intentionally," "professional service," and "economic damages."

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE
74th Regular Session

February 15, 1995

TO: Honorable David Sibley, Chair
Committee on Economic Development
Senate
Austin, Texas

IN RE: Senate Bill No. 26
By: Bivins

FROM: John Keel, Director

In response to your request for a Fiscal Note on Senate Bill No. 26 (Relating to civil remedies for deceptive trade practices.) this office has determined the following:

No fiscal implication to the State or units of local government is anticipated.

Source: Office of the Attorney General
LBB Staff: JK, KVO, RR

A BILL TO BE ENTITLED

AN ACT:

relating to civil remedies for deceptive trade practices.

Jan 11, 1995

Filed with the Secretary of the Senate

Jan 11, 1995

Read and referred to Committee on ECONOMIC DEVELOPMENT

Reported favorably

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by:

unanimous consent

_____ yeas, _____ nays

Read second time, _____, and ordered engrossed by:

unanimous consent

a viva voce vote

_____ yeas, _____ nays

Senate and Constitutional 3 Day Rule suspended by a vote of _____ yeas, _____ nays.

Read third time, _____, and passed by:

A viva voce vote

_____ yeas, _____ nays

SECRETARY OF THE SENATE

OTHER ACTION:

Engrossed

Sent to House

Engrossing Clerk _____

Received from the Senate

Read first time and referred to Committee on

Reported ____favorably (as amended) (as substituted)

Sent to Committee on (Calendars) (Local & Consent Calendars)

Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)

Constitutional rule requiring bills to be read on three several days suspended (failed to suspend) by a vote of _____ yeas, _____ nays, _____ present, not voting.

Read third time (amended); finally passed (failed to pass) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

Returned to Senate.

Returned from House without amendment.

CHIEF CLERK OF THE HOUSE

Returned from House with _____ amendments.

Concurred in House amendments by a viva voce vote _____ yeas, _____ nays.

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____
_____, _____, and _____

_____ House granted Senate request. House conferees appointed: _____, Chairman;
_____, _____, _____.

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
_____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by:

{ a viva voce vote
_____ yeas, _____ nays

OTHER ACTION:

_____ Recommitted to Conference Committee

_____ Conferees discharged.

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
_____ yeas, _____ nays